

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

**HENRY JAMES WIMBERLY, JR.,**

**Plaintiff,**

**VS.**

**INVESTIGATORS TIM WILLIAMSON,  
JOHNNY MEYERS, TIM WATKINS, and  
DAVID A. KNIGHT; GRADY CO. POLICE  
DEPT.; DOUGHERTY, MITCHELL, and  
THOMAS CO. SHERIFFS DEPTS.; GRADY,  
DOUGHERTY, THOMAS MITCHELL, and  
TALLAHASSEE COUNTIES,**

**Defendants.**

**CIVIL ACTION FILE  
NO. 1:06-CV-52 (WLS)**

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**ORDER GRANTING MOTION FOR STAY OF DISCOVERY AND EXTENDING TIME  
TO FILE DISPOSITIVE MOTIONS**

On November 2, 2006, Defendants Williamson and Watkins filed a motion seeking dismissal of Plaintiff's complaint as to them alleging that inasmuch as Plaintiff has "three strikes" pursuant to the Prison Litigation Reform Act it is improper to allow him to proceed in this matter *in forma pauperis*. Defendants correctly point out that if in fact Plaintiff does have "three strikes" the appropriate remedy is dismissal of his complaint without prejudice to his right to re-file upon payment of the entire \$350.00 civil filing fee. Dupree v. Palmer, 284 F.3d 1234 (11<sup>th</sup> Cir. 2002). As a practical matter, in the event that Plaintiff does have "three strikes" which will require dismissal of the complaint as to the movants, it will have to be dismissed as to all Defendants.

Also on November 2, 2006, Defendants Williamson and Watkins filed the instant motion

seeking a stay of discovery and an extension of time in which to file dispositive motions during the pendency of the motion to dismiss the complaint. On November 20, 2006 the undersigned directed that Plaintiff file any response to the motion to dismiss he desires within twenty (20) days of that date.

This case is slightly more than six months old. The court is persuaded by the argument of the Defendants that it makes no sense for the parties to engage in expensive and time consuming discovery during the pendency of the motion to dismiss the complaint in the event the motion to dismiss has to be granted. Accordingly, the Motion to Stay Discovery and to Extend the Time to File Dispositive Motions is **GRANTED** during the pendency of the motion to dismiss. In the event the Court finds that the Plaintiff did not have “three strikes” when he filed this complaint and denies the Motion to Dismiss a new discovery schedule will be entered at that time.

SO ORDERED, this 22<sup>nd</sup> day of November 2006.

/s/ **Richard L. Hodge**  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE